

**STATE OF TENNESSEE**  
**ex rel. LESLIE A. NEWMAN,**  
**COMMISSIONER**  
**OF COMMERCE AND INSURANCE,**  
**STATE OF TENNESSEE,**

**vs.**

**XANTUS HEALTHPLAN OF TENNESSEE,  
INC.**

<sup>1</sup> Xantus was placed into a voluntary consent order of rehabilitation by the Chancery Court of Davidson County on March 31, 1999.

The Court authorized the Liquidator and Special Deputies to pay, as Class 1 priority, outstanding and valid proofs of claims for medical and other authorized services rendered to XHT enrollees and to XHT from April 1, 1999 forward.<sup>2</sup> Id. at 11, 17-18. Proofs of claims that the Liquidator denied, rejected, or otherwise determined to be invalid were subject to the disputed claims procedures as set forth in Tenn. Code Ann. § 56-9-327. Id. at 18.

The Court further ordered that all Class 2 pre-receivership provider claims (for services incurred prior to April 1, 1999) that had been submitted to the Receiver pursuant to the September 28, 1999 Scheduling Order and adjudicated by the Court on November 16, 1999, were not to be re-submitted during the Liquidation proof of claim process. Id. at 17. The Special Deputy Liquidator sent by first class mail notice to each Class 2 pre-rehabilitation provider claimant of the amount still owed on each claim.

#### **Claims Submitted Pursuant to the Order of Liquidation**

On February 3, 2004, the Special Deputy sent by first class mail notice of the liquidation and proof of claim forms to approximately 35,482 potential claimants identified and maintained in the XHT database. In addition, the Special Deputy caused notice to be published in all major newspapers of general circulation in the state on February 15, 2004. The notice and proof of claim forms and instructions were posted on the websites of XHT and the Tennessee Department of Commerce and Insurance. The notice instructed all potential claimants to file their proofs of claims

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<sup>2</sup> Prior to TennCare's termination of XHT's Contractor Risk Agreement ("CRA") on July 31, 2003, XHT negotiated and executed with TennCare and the Centers for Medicare and Medicaid Services ("CMS") an amendment to the CRA ("Amendment 4"), which guaranteed that, upon termination of XHT's CRA, TennCare would continue to pay for the reasonable costs of medical provider claims incurred from April 1, 1999 through July 31, 2003, and the administrative expenses incurred in processing and paying these claims (the "run-out").

for services provided during the rehabilitation period with the Liquidator by no later than 4:30 p.m. Central Time on May 14, 2004 (“final claims bar date”).

The Liquidation received approximately 77,000 provider claims for services rendered during rehabilitation and numerous non-provider proofs of claims. XHT continued to receive late filed proofs of claims after the May 14, 2004 final claims bar date, and these claims have been resolved or adjudicated as Class 7 priority for distribution purposes. In the Liquidator’s determinations on proof of claims for claimants lower than Class 2 priority, the Liquidator provided notice that there were not sufficient funds in the estate to make payments on these claims.

All claims submitted pursuant to the Order of Liquidation for services provided during rehabilitation, including the approximately 77,000 provider claims and numerous non-provider claims, have been processed, adjudicated, and resolved in accordance with the Order of Liquidation. As authorized by the Liquidation Order, the Class 1 claims as resolved have been paid by TennCare.<sup>3</sup>

#### **Claims Submitted Pursuant to the Order of Rehabilitation**

After being placed into rehabilitation on March 31, 1999, all providers and other creditors were required to submit all pre-receivership claims for charges incurred and unpaid prior to April 1, 1999, no later than October 4, 1999 (i.e., pre-rehabilitation claims bar date). See Court’s September 28, 1999 Scheduling Order. Thousands of claims were received. The Special Deputies processed the provider claims, which were designated as Class 2 priority for distribution pursuant to Tenn. Code Ann. § 56-9-330(a)(2). Notice was sent to each provider detailing the adjudicated amount of the provider’s claim owed by XHT. Each provider was given the opportunity to respond and object to

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<sup>3</sup> See supra note 2.

the Receiver's debt estimate. Numerous providers objected to the adjudicated value of their claims, and these objections were subsequently resolved as adjudicated by the Court on November 16, 1999.

On October 28, 1999, the Special Deputies submitted to the Court a Proposed Plan for partial payment of pre-rehabilitation debt, which set forth a method by which the provider debt could be partially paid. Along with the Proposed Plan, the Special Deputies submitted to the Court a schedule of XHT's pre-rehabilitation debt broken down on a provider-by-provider basis and of the partial payment for each provider, which reflected a pro-rata distribution based on the overall pre-rehabilitation debt figure. In its Order dated November 16, 1999, the Court ordered payment of the pre-rehabilitation claims as set forth in the schedule to the Proposed Plan for partial payment, with the Court-ordered change regarding the pro-rata payment to MIM (the pharmacy network coordinator for XHT). See Memorandum and Order (dated Nov. 16, 1999) at 15. In addition, the Court approved the 100% payment of *de minimus* provider claims. See id.

In 1999 and 2000, the Special Deputies made pro-rata distributions totaling approximately \$30 million as approved by the Court in the Proposed Plan for partial payment to the Class 2 pre-rehabilitation provider claimants from the proceeds of the approximately \$26.4 million loan obtained from the State<sup>4</sup> and from certain assets of XHT. No interested parties, including prior ownership, objected to these distributions.

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<sup>4</sup> Pursuant to the Liquidation Order, the State of Tennessee Department of Finance & Administration has filed a proof of claim for the approximately \$26.4 million loan that the State made to XHT during rehabilitation. According to the Credit Agreement, the repayment of the loan is subordinated to XHT's repayment of Class 2 pre-rehabilitation provider debt as set forth in the Proposed Plan for partial payment of pre-rehabilitation provider debt (dated October 28, 1999) in full and repayment of pre-rehabilitation premium taxes in full. In accordance with the terms of the Credit Agreement, the Liquidator has advised the Department of Finance & Administration that the State's claim will not become due and payable because there are not enough estate assets to pay Class 2 pre-rehabilitation provider claims in full.

In 2001, as approved by the Court, the State purchased a portion of the pre-rehabilitation provider debt of approximately \$19.6 million by paying for assignments of the providers' claims and consequently has substituted as creditor.<sup>5</sup>

Pursuant to the Liquidation Order, the pre-rehabilitation provider claims submitted to the Receiver pursuant to the September 28, 1999 Scheduling Order and adjudicated on November 16, 1999, are not to be reconsidered or re-adjudicated during liquidation. See Liquidation Order, at 17. As the rehabilitation claims have now been resolved and the Class I claims paid, the Liquidator is seeking court approval to make the final distribution of the remaining estate assets to the pending pre-rehabilitation Class 2 provider claimants.<sup>6</sup> Exhibit 1 to the Affidavit of Lisa Jordan that is filed contemporaneously herewith details the interim payments that were made in 1999, 2000 and 2001, as well as the proposed final distribution.<sup>7</sup>

#### **Final Distribution Amount**

As of February 29, 2008, the XHT estate has funds totaling \$10,441,983.91.<sup>8</sup> It is estimated that \$159,469.08 will be needed to cover Class 1 administrative expenses through the close of the

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<sup>5</sup> Pursuant to the Liquidation Order, the State of Tennessee Department of Finance & Administration has filed a proof of claim for the approximately \$19.6 million pre-rehabilitation provider debt that the State purchased and assumed as a creditor. In its proof of claim, the Department of Finance & Administration has specifically set forth that it is only claiming this amount after all Class 2 pre-rehabilitation provider claims are paid in full. The State has voluntarily subordinated payment of its claim until XHT repays Class 2 pre-rehabilitation provider debt in full. As there are not enough assets to pay the Class 2 pre-rehabilitation provider claimants in full, the Liquidator has advised the Department of Finance & Administration that the State will not receive any distribution on this claim.

<sup>6</sup> As there are not sufficient funds to pay Class 2 claims in full, claims lower than Class 2 priority will not receive distributions from the XHT estate. The Liquidator advised these claimants in the Liquidator's determinations on the proofs of claims that they would not receive any distribution as there were not sufficient funds in the estate to pay all Class 2 claimants in full.

<sup>7</sup> Exhibit 1 to L. Jordan's Affidavit which sets forth the amount of final distribution that will be made to the Class 2 claimants does not include the *de minimus* payments made to providers with claims less than \$2,000 in amount as ordered by the Court pursuant to the November 16, 1999 Order.

<sup>8</sup> The funds available for distribution do not include any previously distributed but unclaimed amounts from the XHT estate.

estate, leaving \$10,282,514.83 available for distribution to Class 2 claimants as a pro rata distribution to each claimant in proportion to each claimant's amount "Remaining Total Due" set forth in Exhibit 1 to L. Jordan's Affidavit. Exhibit 1 sets forth all Class 2 claims and the amount payable for each claim for the final distribution.

The Liquidator requests that claimants be given a maximum of ninety (90) days from the date claims checks are issued to negotiate the checks. After the ninety-day period, unclaimed funds subject to distribution will be turned over to the State Treasurer in accordance with Tenn. Code Ann. § 56-9-333(a). Notice of the ninety-day period will be printed on the face of the claims checks.

Additionally, the Liquidator requests that the Liquidation be given authority to destroy the records of the Liquidation pursuant to Tenn. Code Ann. § 56-9-336. The Liquidator has offered to TennCare all records for services provided to XHT enrollees and XHT during the rehabilitation period and paid for by TennCare. As of the date of this filing, TennCare has been provided with the records that it has requested in electronic format. The five (5) year statutory requirement for retention of medical records will run on August 1, 2008. The Liquidator has determined that claims records and all other records being stored at Richards & Richards are no longer useful or relevant to the Liquidation during the final phase of winding down. Thus, the Liquidator proposes to destroy these records after August 1, 2008, if approved and ordered by the Court in accordance with Tenn. Code Ann. § 56-9-336.

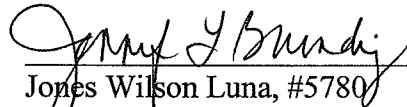
After the unclaimed funds are transferred to the State Treasurer and the records are destroyed, the Liquidator will apply to the Court for a Final Order authorizing closure of the Liquidation after court costs are paid and discharge of the Liquidator upon completion of all 2008 tax filings.

**Conclusion**

Based on the foregoing, the Liquidator respectfully requests that the Court enter an Order approving the Motion to Approve Final Distribution of Estate Assets upon the terms prayed for therein.

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been mailed, first-class, postage prepaid, on this 30th day of April, 2008, to the following:

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